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SUBJECT: Taiwan TIFA: AUSTR Stratford presses on IPR

REF: 06 TAIPEI 4007

#### Summary

1. Summary. As part of a December 18-19 visit to Taiwan, Assistant United States Trade Representative Timothy Stratford and Deputy Assistant USTR Eric Altbach met with rights-holders, officials from the Taiwan Intellectual Property Office, and the Minister of Education to review IPR issues. Rights-holders expressed worries over the impact of an IP court and encouraged passage of legislation covering peer-to-peer file sharing and Internet service provider (ISP) liability. Their frustration ran high with IPR problems on university campuses. TIPO highlighted recent progress and claimed that it was working with Chinese authorities to improve IPR protection in the PRC. While professing not to care about the Special 301 process, TIPO's Director General asked that Taiwan be removed from the list. AUSTR Stratford encouraged TIPO to push needed legislation through the Legislative Yuan and urged the Minister of Education to address on-campus IPR issues. Other non-IPR meetings covered in septels. End Summary.

#### Rights-holders Complain -- IP Court and Campus Piracy

2. AUSTR Stratford and DAUSTR Altbach met with rights-holders to hear their views on IPR protection in Taiwan. The group included Taiwan representatives from the MPA, IFPI, the Business Software Alliance, and American book publishers. Their top concerns were pending legislation on regulating online peer-to-peer file sharing and on Internet Service Provider (ISP) liability, the scope and impact of an Intellectual Property Court, and on-campus piracy.

3. They opened the meeting with an update on IPR-related legislation currently before the Legislative Yuan. They expected legislation regulating peer-to-peer (P2P) file sharing to pass this session. Although the legislation has a "for profit" provision, meaning that only P2P services that generate profit are liable for prosecution, rights-holders still favor passage of the bill. They are more concerned about the progress of draft legislation on ISP liability. In particular, they note the draft law only sets general guidelines for takedown notice procedures. Rights-holders stated that procedures should be clearly spelled out in the law.

14. Rights-holders then raised the issue of piracy on and around university campuses. The group was critical of the Ministry of Education's lack of response to their concerns about infringing activity on TANet, the Ministry's computer network. They claimed that piracy was high on TANet and that TANet needs stronger internal controls. The Ministry of Education does not reveal action taken on complaints on individual cases, nor did the Ministry release overall statistics on actions taken against online infringers. Rights-holders claimed that it was much easier to take action and monitor activity on commercial networks.

15. The local representative of MPA, shared preliminary results of a recent survey commissioned by his organization on Internet use by Taiwan university students. The survey covered about 2300 students from 8 different universities around Taiwan. Although the survey did not quantify levels of online piracy, the survey indicated heavy downloading of Internet files by university students. More than 75% of the respondents stated that they downloaded files. Of this group, 84% downloaded music and 49% downloaded movies. Less than half of the respondents confirm whether the file is legal before downloading, and interestingly, only about 40% of students surveyed think the government and their school do enough to propagate an anti-piracy message.

16. Rights-holders argued that the Minister of Education should appoint a high-level official to take responsibility for IPR on campus. The current contact window, which is a clerk-level employee at the Ministry's computer center, can be easily ignored by universities, who exercise a great deal of autonomy over their own university networks.

17. The representative of textbook publisher John Wiley & Sons also

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urged universities to improve IPR protection for printed materials on campus. Students should be not be allowed to use illegal photocopies in the classroom, he said, and colleges should "record demerits" for students using illegal photocopies. He also suggested that the MOE establish a high-level task force with industry participation to address the IPR issue.

18. All rights-holders expressed concerns about the proposed intellectual property court. Draft legislation is currently before the Legislative Yuan that will establish an IP Court with limited scope. According to the draft, the IP Court will only cover civil cases in the first instance and civil and criminal cases in the second instance. That means that all copyright cases would need to go through the regular district courts and would not have access to IP Courts until an appeal is filed.

19. Robin Lee, of IFPI, complained that this meant that a great deal of IP cases will continue to go through the district courts. Because Taiwan civil procedures are weak and ineffective, rights-holders typically take the criminal approach in dealing with infringers, he said. He also complained that, although the law would create a dedicated cadre of judges assigned to the IP Court, it does not create a separate group of IPR prosecutors. Because evidence can be difficult to collect and technical explanations complex, the Ministry of Justice had argued for special IP prosecutors to be assigned to the court, but the Judicial Yuan refused.

110. Spencer Yang of the MPA noted that different rights-holder groups had "various levels of urgency" regarding the IP Court. For example, 50% of movie piracy involves street vendors. These are relatively straightforward cases, so his members are not so concerned about the scope of the IP Court. (Note: The Amcham IPR committee also supports the current IP Court legislation in its current form. End note.) All rights-holders expressed concern, however, that a new IP Court could absorb resources needed by district courts to effectively deal with IP cases.

TIPO Proud of Taiwan's Progress and Efforts in China

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¶11. Tsai Lien-sheng, Director General of the Taiwan Intellectual Property Office, reviewed his office's recent efforts at advancing Taiwan's IPR agenda. He began by noting that AUSTR Stratford had just come from China and that he himself had traveled to the Shanghai area in May. Jiangsu provincial IPR authorities and PRC central government authorities had also recently visited Taiwan. The Chinese were curious how Taiwan was able to improve its IPR environment so quickly, he said, and were very interested in how Taiwan was handling IPR issues. "Determination," he said, was his answer. Taiwan's efforts were not a response to foreign pressure, but part of a strategy to upgrade our industry and international competitiveness.

¶12. Tsai reported progress on draft legislation since last month's digital video conference on IPR:

--P2P legislation - The bill was expected to pass without controversy. On December 15 he had appeared before the Legislative Yuan's Economic Committee to answer questions about the bill. He expected the bill to move smoothly through the LY.

--ISP liability legislation - stakeholders are still debating the details of the bill and TIPO would be hosting a seminar next month on the issue. TIPO planned to invite U.S. experts.

--IP Court legislation - There are two separate bills moving through the LY to establish the IP Court: the Procedure Law and the Organic Law. The Procedure Law has already passed the first reading and the second and third reading will happen soon. No party negotiation will be required to pass this law. Some KMT legislators still have some reservations about the Organic Law, however. The Judicial Yuan hopes that IP Court can begin work by March 2007. Training for judges will have been completed by that time. This start date

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depends on when or whether the Organic Law passes in the LY.

¶13. Turning to Internet piracy, DG Tsai noted that in the first 11 months of 2007, law enforcement pursued 1400 cases of Internet piracy. This was a 116% increase over the same period last year. It does not mean that the problem has become more serious, he said, since all are small cases. Taiwan has established a special IPR police team and an optical disk joint task force. EzPeer and Kuro, two P2P services, have been transformed into legal operations.

¶14. He also hopes for more international cooperation to prevent Internet piracy. Next August TIPO will host a meeting for the APEC Intellectual Property Experts Group. The meeting will focus on Internet piracy, and Tsai hopes to share Taiwan's experiences with other APEC member economies. He noted that international cooperation was particularly important in fighting Internet piracy and that most illegal websites uncovered by Taiwan law enforcement were overseas. TIPO has passed lists of illegal sites based in the U.S. and in Japan to both countries for investigation.

¶15. Turning to IPR on-campus, Tsai stated that he had written to Minister of Education Tu, asking him to establish a contact window at the Ministry for IPR concerns. We consider campus to be "sensitive" so police and judicial involvement must be discrete. Campus "self-discipline" may be most effective in protecting IPR, he said. Although schools have improved regulations and require students to observe IPR, more precise regulations indicating that students can not use pirated textbooks or illegally download on TANet would be helpful.

¶16. Infringing activity off-campus is also an issue, and TIPO has requested that the IPR police set up a special team to deal with off-campus photo-copying. We still need additional assistance from book publishers in this effort, he said.

¶17. Tsai concluded his remarks by commenting on the U.S. Special 301 process. He stated that he did not care about Special 301, but that when he appears before the LY seeking support for TIPO's budget, he is confronted with LY members asking him why Taiwan is still on the 301 list even after all of its efforts to improve its IPR protection regime. He hoped, he said, that since Taiwan has

done so much that it should not appear on the list with China.

¶18. AUSTR Stratford thanked Tsai for his comments and for the work TIPO has done with U.S. rights-holders. In particular stated that he appreciates the work on the IP Court and hopes it can be established soon. At the same time, however, he hoped that judges and prosecutors at the district court level would receive the training and resources necessary to effectively handle IP cases. He looked forward to receiving a chart that that TIPO had offered to provide explaining how prosecutors receive training and are able to specialize on IP issues.

¶19. Regarding P2P and ISP liability legislation, Stratford noted that these were high priorities for the USG and for rights-holders. We hope, Stratford continued, that Minister of Economic Affairs Chen will offer his personal involvement to urge passage of the legislation.

¶20. He also thanked Tsai for his letter to the Minister of Education seeking his support on IPR issues. Stratford quoted from the survey he had received that morning from MPA and said that we needed to set a good example for young people.

¶21. To assist in finding a good channel on law enforcement cooperation, Stratford remarked that the legal attach from Hong Kong will travel to Taiwan early in 2007 to discuss the issue.

¶22. In closing, he stated that the Special 301 report was written by IP office colleagues at USTR. Of course they worked closely with our office, AUSTR noted. I understand, he said, why Taiwan would not want to be listed in the same category as the PRC. The U.S. was currently in intense negotiations with China about bringing a case against them in the WTO over IPR. He pointed out that Taiwan and

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China were placed in different categories. But, he acknowledged, it was better to be in neither category. We will try to talk about the progress that Taiwan has made and emphasize the close working relationship we have with each other. The report is issued at the end of March. We hope that we can talk about additional progress in the next few months.

#### Minister of Education Acknowledges Serious Problem

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¶23. At a separate meeting with Minister of Education TU Cheng-sheng, AUSTR Stratford called IPR one of the most important issues between the U.S. and Taiwan. One of the major weaknesses is on-campus behavior. Referring to the MPA student survey, Stratford stated that the U.S. was concerned about both about illegal activity on campus and the prospect of a new generation of college grads who had no respect for IPR. Important work needs to be done, Stratford emphasized, and suggested that Minister Tu appoint a Vice Minister to take responsibility for IPR and establish a task force with stakeholders to deal with the issue.

¶24. Minister Tu acknowledged that IPR was "a serious problem." He promised that the Ministry of Education (MOE) would do its best to deal with it. I will ask my colleagues, especially the department of higher education to ask the universities to make our students understand this serious issue, he said. He also wanted to point out, however, steps that the MOE had already taken such as university courses on IPR as well as IPR protection included in university evaluations. Tu said that "we will consider how to improve."

#### But Doesn't Seem to Do Much

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¶25. He reviewed other MOE initiatives. Ministry representatives had participated in the IPR Dialogue DVC hosted by AIT last month. MOE planned to set up supervisory groups at each university which would include faculty and set rewards for IPR compliance. A TANet SOP has been drafted to handle IPR complaints and dataflow hardware and software has been purchased by many universities to regulate the transmission of large data files on the network. The MOE is also planning more conferences and workshops on IPR. We will teach our students to follow rules and regulations, he said. At that point

Minister Tu announced that he had to leave to meet with the Prime Minister, and Stratford once again urged him to think about appointing a senior official to handle this issue. He did not directly respond.

¶26. Ministry staff wrapped up the meeting, DAUSTR Altbach once again asked the MOE to provide detailed information on the TANet SOP and possible penalties for Internet infringement. Staff reported that this month three students were caught and punished for illegal online infringement.

Comment

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¶27. AUSTR Stratford's meeting with Minister Tu sent a strong signal that the USG is serious about on-campus IPR protection. TIPO has indicated to AIT that they are also disappointed about the lack of real action by the Ministry of Education to address IPR issues on campus. While Minister Tu agreed to meet and was courteous throughout the meeting, it is far from clear if the Ministry plans to take meaningful steps to strengthen IPR protection. AIT will continue to push the Ministry and other high level Taiwan officials on this issue where appropriate. Contrary to protestations otherwise, Taiwan is eager to be removed from the Special 301 list, but even if the LY passes all of the IPR legislation in this session, which is not likely, it would be appropriate to gauge the effectiveness of the legislation that becomes law.  
YOUNG